

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
PER CURIAM

CA06-294

September 13, 2006

OMER ALBERT COMBS
APPELLANT

APPEAL FROM THE MADISON
COUNTY CIRCUIT COURT
[PR-05-40-5]

V.

HON. MICHAEL H. MASHBURN,
CIRCUIT JUDGE

TERESA COMBS SHARP
APPELLEE

MOTION GRANTED;
SANCTIONS IMPOSED

On July 26, 2006, this court granted the motion to dismiss filed by the attorney ad litem for the incapacitated appellant in this case. The appellee is now requesting sanctions pursuant to Rule 11 of the Arkansas Rules of Appellate Procedure, Civil, against Harry McDermott, the attorney who filed the appeal on behalf of the appellant. We dismissed this case because Mr. McDermott filed the appeal even though he had asked to be relieved below, the trial court had relieved him, and had appointed the attorney ad litem with specific instructions to decide whether to pursue the appeal.

Before the ad litem issued her report declining to appeal, Mr. McDermott lodged the record and ultimately filed a brief. The motion to dismiss and the motion for sanctions allege serious misconduct by Mr. McDermott, including fraud, deception and misrepresentation of fees collected and fees earned. We have dismissed the appeal, which is one of the sanctions provided by Rule 11, but we now grant appellee's motion for further sanctions. Because Mr. McDermott filed the appeal in direct contravention of the order of the trial court, we order him to pay the attorney fees of the ad litem and the appellee's attorney expended in the preparation of the motion to dismiss and the motion for sanctions.

Respective counsel have fifteen days from the date of this opinion to file itemized requests for attorney fees, and Mr. McDermott has ten days to respond to those requests.

SAM BIRD, Justice, concurring. I join Judge Griffen in urging this court to refer this matter to the Supreme Court Committee on Professional Conduct (the Committee) for the reasons set forth in his concurring opinion. I write additionally because I am equally, if not more, concerned about McDermott's representations to the trial court regarding entitlement to payment of attorney's fees and reimbursement of expenses he alleges to have incurred during his representation of Combs, both before and after McDermott was relieved as Combs's attorney. I am also concerned about the allegations of a conflict of interest on McDermott's part in purporting to represent the interests of Combs while accepting payment for services from a third party whose interests were alleged to be in conflict with Combs's interests. If an investigation should reveal that these allegations are supported by evidence and are determined by the Committee to be true, then harsher sanctions than the mere payment of the ad litem's fees might be appropriate.

The Executive Director of the Office of Professional Conduct is charged, among other things, with investigating complaints against attorneys, and determining the sufficiency of supporting evidence to warrant the commencement of a formal complaint; and the Executive Director's decision is subject to the review of the Committee. The procedures for the investigation, processing, and disposition of complaints against attorneys are set forth in great detail in the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2006). The Committee and the procedural rules promulgated for the Committee's regulation are uniquely designed to deal with the investigation and disposition of complaints against attorneys, and the imposition of sanctions when appropriate. On the other hand, this court is ill-suited to investigate the sufficiency of evidence to support a complex and contested complaint such as the one involved in this case. This court also lacks the authority to impose some of the sanctions that might be found to be appropriate in this case.

For these reasons, this court should refer this complaint to the Executive Director and defer

to the Committee's investigation and disposition.

Judge Griffen joins in this concurring opinion.